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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Janko Budzisch

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SAP/BSTZ

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EXAMINER

ORR, HENRY W

ART UNIT

PAPER NUMBER

2176

MAIL DATE

DELIVERY MODE

10/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/749,769	Applicant(s) BUDZISCH ET AL.	
	Examiner Henry Orr	Art Unit 2176	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Henry Orr/

/Rachna S Desai/
 Primary Examiner, Art Unit 2176

Continuation of 5. Applicant's reply has overcome the following rejection(s): 35 U.S.C. 101 Rejection to claims 11-13, 15-18, 220-23,25-28 and 30.

Continuation of 11. does NOT place the application in condition for allowance because: In general, Applicant argues that Sylor fails to disclose a node representative of a software component that can spawn a subtree whose corresponding nodes include: 1) a first node that identifies the computing system that the software component is instantiated on; 2) an availability node that identifies with colors whether the software component is available/unavailable; and 3) a heartbeat node (see response p. 4).

In particular, Applicant asserts that paras 64 and 65 describe the resource of Sylor not the GUI of Sylor.

Examiner respectfully disagrees.

Sylor teaches a resource to be represented by a resource profile (see abstract - resource profiles represent networked resources). Sylor teaches that resource profile is rendered or displayed in a fishbone layout (see abstract - rendering in a fishbone layout a hierarchy that includes a plurality of resource profiles). Examiner interprets the rendered fishbone layout of resource profiles (i.e., resources) as part of the graphical user interface. Therefore, because a networked resource can be represented by a rendered resource profile on a GUI as taught by Sylor, Examiner interprets the resource as part of the GUI. Thus, the resource of the GUI is described in paras. 64 and 65.

Applicant asserts that Fig. 9b maps dependencies between different resource profiles- but again does not disclose anything about the GUI of Sylor.

Examiner respectfully disagrees.

As explained above, resource profiles are rendered in a GUI (see abstract - rendering in a fishbone layout a hierarchy that includes a plurality of resource profiles). Therefore, Sylor discloses different resource profiles that can be rendered or displayed in a GUI.

Applicant asserts that par. 141 does not pertain to the GUI of Sylor.

Examiner respectfully disagrees.

In par. 141, Sylor describes a resource profile. As explained above, resource profiles are rendered in a GUI (see abstract -rendering in a fishbone layout a hierarchy that includes a plurality of resource profiles). Therefore, par. 141 does pertain to the GUI of Sylor.

Applicant asserts that mouseover dialog 517 of Sylor is simply incapable of meeting the Applicant's claim element which is directed to a node within a subtree.

Although, it is unclear to the Examiner as to which claim element Applicant is referring that the mouseover dialog 517 does not read on, Examiner notes that the mouseover dialog 517 is relied upon as the means in which the resource profile displays text received from a network.

With respect to the Applicant's claimed "availability node", Applicant asserts that par. 97 does not disclose anything about the GUI of Sylor.

Examiner respectfully disagrees.

In par. 97, Sylor describes an alarm that is created for a resource profile. The alarm may indicate a failure status of the resource represented by the resource profile. Therefore, by describing an alarm that associated with a resource profile that is rendered in a GUI (see abstract), Sylor discloses something (i.e., alarm information of rendered resource profile) about the GUI in par. 97.

Applicant asserts that par. 135 does not appear to indicate a node is specially created to indicate a component's availability and whether or not that node is part of a sub tree.

Firstly, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a node that is specially created) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Secondly, Examiner interprets the resource profile as capable as serving as the "availability" node and the "heart beat" node because the resource profile is capable of performing the functions of the "availability node" and "heart beat node" as recited in the claims. In other words, the claim language does not necessitate that the "availability" node and the "heart beat" node be separate and distinct nodes (i.e., specially or distinctly created for the function).

Finally, with respect to the Applicant's claimed "heart beat" node, Applicant asserts that the mouseover dialog 517 of Sylor is clearly not a node within a subtree and is therefore incapable of meeting the Applicant's heartbeat node claim element.

Examiner respectfully disagrees.

Examiner relies on the resource profile to teach the heartbeat node element as recited in the claim. The claim recites " a heartbeat node that displays text contained in a message received from a network. Solor teaches a resource profile displaying the recited text via "mouseover dialog". Therefore, when the user mouses over the resource profile, a dialog mechanism associated with the resource profile is used to display the text. In other words, the claims recites that the heartbeat node displays text; the claims does that necessitate that the text be positioned on the heartbeat node itself. For example, a heartbeat node that displays text would anticipate a heartbeat node that displays text using a dialog. Thus, the resource profile displaying text using a separate dialog as taught by Solor does teach or suggests a heart beat node that displays text as recited in the claims.

For at least the foregoing reasons, Examiner maintains Prior Art Rejections. .